

Housing, Communities and Local Government Committee

House of Commons, London SW1A 0AA

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Kit Malthouse MP
Minister of State for Housing
Ministry of Housing, Communities and Local Government

Rt Hon Claire Perry MP
Minister of State for Energy and Clean Growth
Department for Business, Energy, and Industrial Strategy

5 September 2018

Dear Kit and Claire,

I am writing to you in light of the Government's public consultations launched just before the summer recess on the inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime and on permitted development for shale gas exploration, and in response to your letter of 15 August regarding the Government's response to the Committee's recent report on *Planning guidance on fracking* which, as you know considered the proposed measures now being consulted on.

During our inquiry, we held three public evidence sessions, hearing from 15 witnesses, including Mineral Planning Authorities, regulatory bodies, anti-fracking campaigners and industry representatives, as well as the Government. We also received 200 written submissions from a range of stakeholders.

We heard clear evidence that fracking planning applications should not be brought under the NSIP regime and that it is inappropriate for any type of shale gas development to be given permitted development rights. The Committee's key concerns relating to the consultation are detailed below, although I particularly draw your attention to Chapter 6 of our report which details fully the evidence we heard and our findings which we trust will inform your consultation responses.

Fracking planning applications should not be brought under the NSIP regime.

Our report found that there is little to be gained from treating shale gas applications under the NSIP regime. There is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We raised concerns that if the NSIP regime were to be adopted, the direct relationship between fracking applications and Local Plans in communities would be lost, resulting in a significant loss to local decision-making. Given our findings, we are concerned that a move to bring fracking under the NSIP regime seems to be a foregone conclusion; it appears that this consultation is not into whether shale gas production projects are brought into the 2008 Planning Act regime but, rather, simply on the timing of, and criteria for, such a move. This is of particular concern given that the former Minister for Housing [told](#) us that the key measures are

“still at a very formative stage... you and your Committee, and indeed your report, will come at a very timely moment, with the opportunity to fully influence the direction of travel.” We would welcome clarity on whether the Government intends to bring shale gas production applications under the NSIP regime irrespective of the findings of the consultation and our report, and confirmation of whether the consultation is intended only to consider how NSIP is to be introduced rather than whether it should be introduced.

Furthermore, we find it surprising that an impact assessment has not been produced alongside the consultation despite guidance to the contrary in the Government’s [consultation principles](#). There is, therefore, no evidence of possible impacts or benefits associated with this proposed change in the regime – including on public involvement. It is concerning that respondents are expected to engage in this consultation without any evidence as to the possible impacts of such a move. I would be grateful if you could provide the Committee with further details about why an impact assessment has not been prepared.

Despite our opposition to bringing fracking under the NSIP regime and the overwhelming evidence we received, if the planning regime is changed, our report called for a National Policy Statement “to be prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes”. However, we note that the consultation is “not proposing, or seeking views on, a National Policy Statement for shale gas production at this stage”. Therefore, I would also be grateful if you could clarify when the Government would hold such a consultation should it go ahead with the proposed move to the NSIP regime, and whether it would be introduced through primary or secondary legislation.

Shale gas development of any type should not be classed as a permitted development.

Classing shale gas exploration as a permitted development could have the deleterious effects of removing an element of the fracking process from democratic control whilst, at the same time, potentially removing from Mineral Planning Authorities (MPAs) the resources to enable them to deal with such applications within a new regime that still requires them to scrutinise the applications. We recognise that there is still a role for MPAs in the permitted development process, however it is unlikely that they will have sufficient resources given that MPAs would not receive any application fee to support it in undertaking this work; we heard substantial evidence on the resource pressures faced by MPAs in dealing with fracking applications. If permitted development for shale gas exploration is adopted, would MPAs be able to draw on the resources and support of the planning brokerage service or shale support fund?

Moreover, it will not necessarily expedite the processing time for such works as claimed in paragraph 10 of the consultation document. Given that, even under a permitted development regime, MPAs could be required to carry out scrutiny of the works, consult with relevant bodies, apply conditions to a permitted development, to assess and approve measures to mitigate impacts, and, possibly, consult the public, there must be some doubt as to the degree to which the process will be speeded up, particularly given the resourcing challenges referenced above.

As with the NSIP consultation above, we would welcome clarification on why an impact assessment has not been prepared for this consultation, particularly as the consultation document states that “it is unclear the impact a permitted development right for non-hydraulic fracturing shale exploration development would have or even whether such a right would be effective”. Treating shale gas exploration as permitted development represents a significant change to the planning regime and it seems odd that such a proposal is being consulted on without any assessment or knowledge of the impacts or benefits that this will have. Also as

above, I would welcome clarity on whether such a change, if implemented, would be introduced through primary or secondary legislation.

Government response to the Committee's report

Finally, regarding the letter of 15 August, it is disappointing that the Government is unable to respond in full to the Committee's *Planning guidance on fracking* report until February 2019, seven months after it was published and five months over the expected response deadline. The Osmotherly Rules state that "only in exceptional circumstances should a response be deferred for more than six months after the Report's publication". Notwithstanding the potential judicial review claims, the Government's two ongoing consultations to which the letter refers follow from the untimely publication during the course of our inquiry of the WMS of 17 May on fracking planning policy. We commented on the impact of this timing on our inquiry in Chapter 1 of our report.

Nevertheless, the Committee has agreed that it would prefer to receive a full response, and trust that this will be as soon as possible after the deadline for responses to both consultations and no later than 8 February 2019. We expect to receive the response to our report before or no later than the publication of the Government response to the public consultations and ask that the response to the public consultations explains how our report has been taken into account. We also ask that you clarify whether, if introduced, these two proposals will be introduced through primary or secondary legislation.

I look forward to receiving your reply to this letter in good time and trust that our *Planning guidance on fracking* report will be fully taken into account alongside this correspondence during your review of the consultation responses.

A handwritten signature in black ink, appearing to read 'Clive Betts', with a large, stylized initial 'C' at the start.

Clive Betts MP
Chair, Communities and Local Government Committee